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## SENATE BILL No. 142

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 8-1-2.3-6.

**Synopsis:** Service areas for municipal electricity suppliers. Requires a municipally owned electric utility that seeks to include annexed territory in its assigned service area to pay additional severance damages to incumbent electricity suppliers based on electricity sold to service accounts during the five year period beginning one year before the effective date of the annexation ordinance. Requires the utility regulatory commission (IURC) to determine and enforce payment of severance damages. Requires the IURC in most circumstances to approve an agreed upon change in the boundaries of the assigned service areas.

**Effective:** July 1, 2002.

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January 7, 2002, read first time and referred to Committee on Energy and Economic Development.<sup>1</sup>

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Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

## SENATE BILL No. 142

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 8-1-2.3-6, AS AMENDED BY P.L.217-1999,  
2       SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3       JULY 1, 2002]: Sec. 6. The boundaries of the assigned service areas of  
4       electricity suppliers may not be changed except under any one (1) of  
5       the following circumstances:

6           (1) If a municipality which owns and operates an electric utility  
7           system ~~and furnishes~~ **furnishing** retail electric service to the  
8           public annexes ~~an~~ area beyond the assigned service area of its  
9           municipally owned electric utility, ~~and the ordinance providing~~  
10          for the annexation provides that the annexing city has developed  
11          and adopted a fiscal plan and has established a definite policy to  
12          furnish the territory to be annexed within a period of three (3) or  
13          four (4) years governmental and proprietary services substantially  
14          equivalent in standard and scope to the governmental and  
15          proprietary services furnished by the annexing city to other areas  
16          of the city regardless of topography, patterns of land utilization  
17          and population density similar to the territory to be annexed; then



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the municipally owned electric utility may petition the commission to change the assigned service area of the municipally owned electric utility to include the annexed area. A municipally owned electric utility shall exercise its right to petition the commission to change its assigned service area within sixty (60) days after annexation becomes final or lose its right under this subdivision. The commission shall rule on the petition of the municipally owned electric utility within ninety (90) days after its filing. If, upon notice and after hearing, the commission decides that it is in the public convenience and necessity for the municipally owned electric utility to render service to the annexed area, it shall order the assigned service area of the municipally owned electric utility to be changed to include the annexed area with the right to serve and immediate possession to the municipally owned electric utility. The commission order is enforceable in court pending an appeal of that order. An appellant from a court order enforcing a commission order under this subsection shall not be entitled to a stay of the court order pending appeal. In determining public convenience and necessity, the commission shall give consideration to all relevant matters, including but not limited to the following:

- (A) Preference of owners, occupiers, and consumers in the annexed area.
- (B) Ability of the municipally owned electric utility to render service after the assignment of service area.
- (C) Other utility services to be supplied in the annexed area by the municipality.
- (D) Proximity and capability of the service repair facilities of the electricity suppliers involved.
- (E) Preference of local government officials.

However, this subdivision does not apply to incorporations, consolidations, mergers, or annexations that are under IC 36-4-3-4(a)(3), IC 36-4-3-4(b), IC 36-4-3-4(h), or IC 36-4-3-4.1, or that are not contiguous under IC 36-4-3-13(b) or IC 36-4-3-13(c). If any change in an assigned service area is ordered by the commission, all of the electric utility property of another electricity supplier which is devoted to retail electric service within such additional assigned service area shall be acquired at its then reproduction cost new depreciated value; in addition, the acquiring electricity supplier shall pay severance damages limited to, if applicable, the distribution and substation facilities dedicated to and located within the annexed area or

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relocated by reason of the annexation, or an amount equal to two and one-half (2 1/2) times the previous year's gross electric sales from the newly assigned service area, whichever is greater. If the parties do not agree on the amount the acquiring electricity supplier is to pay, then the commission shall determine said amount and order its payment in accordance with this subsection: according to the following procedures:

(A) The municipally owned electric utility must file its petition with the commission not later than sixty (60) days after the annexation becomes effective. The petition must include a certified copy of the annexation ordinance, which serves as conclusive evidence that the area has been lawfully annexed and is part of the municipality. After the filing of a petition under this subdivision, the commission shall promptly enter an order changing the assigned service area facet maps of the municipally owned electric utility and incumbent electricity suppliers to include the annexed area within the assigned service area of the municipally owned electric utility.

(B) Not later than thirty (30) days after filing a petition under this subdivision, the municipally owned electric utility shall determine for each affected incumbent electricity supplier and pay to that supplier an amount not less than the value of all the electric utility property of the incumbent electricity supplier that is devoted to furnishing retail electric service within the additional assigned service area at its then reproduction cost new depreciated value. In addition, the municipally owned electric utility shall pay the incumbent electricity supplier severance damages in an amount equal to:

(i) the value of the incumbent electricity supplier's distribution and substation facilities dedicated to and located within the annexed area or relocated by reason of the annexation, or an amount equal to two hundred fifty percent (250%) the incumbent electricity supplier's gross revenues from electricity sales in the annexed area during the twelve (12) month period ending three hundred sixty-five (365) days before the date the annexation ordinance became effective, whichever is greater; plus

(ii) if additional permanent service locations or service accounts are established in the annexed area during the

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1 five (5) year period beginning three hundred sixty-four  
2 (364) days before the effective date of the annexation  
3 ordinance, one tenth of one cent (\$0.001) for each  
4 kilowatt hour of electricity sold to each of those  
5 permanent service locations or service accounts, for sales  
6 that occur during a five (5) year period beginning on the  
7 date each service location or service account is  
8 established, up to a maximum of one hundred seventy  
9 thousand (170,000) kilowatt hours per service account or  
10 service location for each monthly billing period.

11 The municipally owned utility is not required to pay  
12 severance damages under item (ii) if it is purchasing  
13 electric power or energy from the incumbent electricity  
14 supplier at the time the annexation ordinance becomes  
15 effective. Severance damages must be paid not later than  
16 thirty (30) days after the end of each calendar year in  
17 which severance damages have accrued. The municipally  
18 owned electric utility and incumbent electricity suppliers  
19 shall cooperate to calculate the amount of any severance  
20 damages and shall furnish to each other all information  
21 and records reasonably necessary for the determination  
22 and verification of severance damages. If the municipally  
23 owned electric utility and incumbent electricity suppliers  
24 cannot agree on the amount of severance damages the  
25 municipally owned utility is to pay, the commission shall  
26 determine the amount and order payment in accordance  
27 with this clause. Not later than twenty (20) days after  
28 making a payment, the municipally owned electric utility  
29 shall certify to the commission and to any affected  
30 incumbent electricity supplier that it has paid the amounts  
31 required under this clause.

32 (C) If the municipally owned electric utility fails to make  
33 a payment under clause (B), an affected incumbent  
34 electricity supplier may, not later than sixty (60) days after  
35 the payment is due, and after giving the municipally owned  
36 electric utility reasonable notice of and an opportunity to  
37 cure the defect, file with the commission a petition alleging  
38 that a payment due under clause (B) has not been made. If  
39 the commission finds after notice and hearing that any  
40 payments owed to the incumbent electricity supplier have  
41 not been timely and fully paid, the commission shall order  
42 the municipally owned electric utility to pay:

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- (i) the delinquent payments by a date determined by the commission;
- (ii) accrued interest at the rate set forth in IC 24-4.6-1-102; and
- (iii) the incumbent electricity supplier's costs of filing and prosecuting a petition under this clause.

If the commission finds against the incumbent electricity supplier, it may order the incumbent electricity supplier to pay the costs incurred by the municipally owned electric utility in defending against the incumbent electricity supplier's petition.

(D) A certified copy of a final commission order that:

- (i) determines and orders the payment of severance damages under clause (B); or
- (ii) orders the payment of delinquent payments, interest, and costs under clause (C);

may be filed with the clerk of the circuit or superior court of any county in which part or all of the annexed area is located. A commission order that is filed in a court under this clause may be enforced and executed in the same manner as if it were a final judgment of that court.

(2) Upon mutual agreement of the affected electricity suppliers and approval of the commission, the commission shall approve a boundary line change under this subdivision, unless the commission finds, after a public hearing, that the change would cause:

- (A) duplication of electric utility facilities;
- (B) waste of materials or resources; or
- (C) uneconomic, inefficient, or inadequate electric service to the public.

If notice of a verified request for a change of boundary lines by mutual agreement under this subdivision is published in a newspaper of general circulation in every county in which the boundary lines are located, and no affected electricity customer requests a hearing within twenty (20) days after the last date of publication, the commission may approve the change without a hearing if the commission gives due consideration to the factors set forth in this subdivision.

(3) In the case where a landowner owns a single tract of land which that is intersected by the boundary lines of two (2) or more assigned service areas, and retail electric service can best be supplied by only one (1) electricity supplier, or in the case where

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1 a customer or customers ~~which~~ are housed in a single structure or  
2 ~~which~~ constitute a single governmental, industrial, or institutional  
3 operation, and the electricity suppliers involved are unable to  
4 agree which shall furnish the electric service, any of the electricity  
5 suppliers may submit the matter to the commission for its  
6 determination based upon public convenience and necessity. If,  
7 after notice and hearing, the commission determines that one (1)  
8 or more electricity suppliers are to supply the required retail  
9 electric service and the boundaries of an assigned service area are  
10 to be changed, the assigned service area maps of the electricity  
11 suppliers shall be changed to reflect the new boundaries.

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